

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL HABURSKY,)
)
Plaintiff,)
)
v.) Case No.: 1:23-cv-307
)
ERIE WATER WORKS,)
)
Defendant.)
)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Erie Water Works (“Defendant”) hereby removes this action from the Court of Common Pleas of Erie County, Pennsylvania on the grounds that it is “[a] civil action brought in a State court of which the district courts of the United States have original jurisdiction” under 28 U.S.C. § 1331. The grounds for removal are as follows:

1. On October 3, 2023, Plaintiff Michael Habursky (“Plaintiff”) filed a Complaint in Civil Action (“Complaint”) against Defendants in the Court of Common Pleas of Erie County (the “State Court Action”). A copy of the Complaint is attached here to as Exhibit 1.
2. On October 4, 2023, Defendant was served with the Complaint in the State Court Action.
3. This Notice of Removal is timely filed within thirty days after service on the Defendant in the State Court Action. *See* 28 U.S.C. § 1446(b)(2)(B).
4. Defendants are entitled to remove the State Court Action to the United States District Court for the Western District of Pennsylvania, Erie Division – the district and division embracing Erie County, Pennsylvania, the place where the State Court Action is pending. *See* 28 U.S.C. §§ 1441(a), 1446(a).

5. Count I of Plaintiff's Complaint raises a cause of action under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, et seq., as amended.

6. This Court has original, subject-matter jurisdiction "of all civil actions arising under the Constitution, law, or other treaties of the United States." 28 U.S.C. § 1331.

7. Plaintiff's Count I clearly raises a claim under the ADA, a federal statute giving rise to a federal question. 42 U.S.C. §12101, et seq., as amended.

8. Defendants have also complied with the general procedure for removal of civil actions under 28 U.S.C. § 1446. Pursuant to 28 U.S.C. § 1446(d), Defendants will serve copies of this Notice of Removal upon Plaintiff and will file a copy of this Notice with the Prothonotary of the Court of Common Pleas of Erie County.

9. Nothing in this Notice shall be interpreted as a waiver of relinquishment of Defendant's right to assert any defense or affirmative matter, including, without limitation, a motion to dismiss under Federal Rule of Civil Procedure 12.

WHEREFORE, Defendants remove this action from the Court of Common Pleas of Erie County, Pennsylvania to the United States District Court for the Western District of Pennsylvania, Erie Division.

Date: November 2, 2023

Respectfully submitted,

s/Jill M. Lashay

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CERTIFICATE OF SERVICE

I hereby certify that, on November 3, 2023, a true and correct copy of the foregoing DEFENDANT'S NOTICE OF REMOVAL was served via first-class mail postage prepaid and electronic mail, on the following:

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Counsel of record for Plaintiff

s/Jill M. Lashay

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